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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,257	05/03/2006	Volker Albrecht	710.1035	7709
23280	7590	10/31/2008	EXAMINER	
Davidson, Davidson & Kappel, LLC 485 7th Avenue 14th Floor New York, NY 10018				COSIMANO, EDWARD R
ART UNIT		PAPER NUMBER		
		2863		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/564,257	ALBRECHT ET AL.	
	Examiner	Art Unit	
	Edward R. Cosimano	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 July 2008.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 23-37 is/are pending in the application.
 4a) Of the above claim(s) none is/are withdrawn from consideration.
 5) Claim(s) 23-28 and 31-36 is/are allowed.
 6) Claim(s) 29,30 and 37 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 10 January 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 07/16/2008.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

1. When preparing this Office action the examiner considers the instant application to include:

- A) the Oath/Declaration filed on 03 May 2006 which is acceptable to the examiner;
- B) the Abstract filed on 10 January 2006 which is acceptable to the examiner;
- C) figures 1, 2, 3, 4 & 5 of the set of drawings containing 5 sheets of 5 figures comprising figures 1, 2, 3, 4 & 5 as presented in the set of drawings filed on 10 January 2006 where figures 1, 2, 3, 4 & 5 of the above set of drawings are acceptable to the examiner;
- D) the written description as filed on 10 January 2006 and amended on 10 January 2006 and further amended on 16 July 2008; and
- E) the set of claims as filed on 16 July 2008.

2. Applicant's claim for the benefit of an earlier filing date pursuant to 35 U.S.C. 120, 35 U.S.C. 365(c) and 35 U.S.C. 371 are acknowledged.

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

4. The examiner has considered the prior art cited in the base applications.

4.1 The German language documents listed on the PTO 1449 filed with the Information Disclosure Statement of 03 May 2006 that have been designated as documents B11, B13, B14, B15 & B16 have been considered only in regard to applicant's description provided in paragraph numbers 3, 42, 93, 99 & 111 of the written description as originally filed on 01 January 2006.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.1 Claims 29, 30 & 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5.1.1 In regard to claims 29 & 30, it is noted that as one of ordinary skill at the time the invention was made would fairly and reasonably interpret the language of the claimed invention, then one of ordinary skill at the time the invention was made would be confused by how to

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interpret claimed invention. In this regard it is noted that the claimed invention is directed to a “computer readable storage media” that is characterized by the executable “computer program” or “computer code” or “computer instructions” that are stored on the recited “computer readable media”. As such the claimed invention would be classified into the statutory class of “manufacture/article” (35 U.S.C. 101).

5.1.1.1 However, the claimed invention would be positively interpreted as reciting language that would be interpreted as requiring the claimed “manufacture/article” to have the capability of carrying out or performing the functions of the structures/actions of a claimed invention that has been recited as the invention of a previous claim. As such the claimed invention would then be classified with in the statutory class of a “process” or a “machine” (35 U.S.C. 101).

5.1.1.2 Although it is clear that applicant wishes the claimed invention to include the subject matter recited as a process or a machine in a previous claim, one of ordinary skill at the time the invention was made would fairly and reasonably find the claimed invention to be confusing because it is unclear whether or not the claimed invention is to be considered as either:

- A) an independent claim in the statutory class of a “manufacture” (35 U.S.C. 101); or
- B) a dependent claim in the statutory class of a “process” (35 U.S.C. 101); or
- C) an dependent claim in the statutory class of “manufacture” (35 U.S.C. 101); or
- D) a independent claim in the statutory class of a “process” (35 U.S.C. 101);

Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990) and see also MPEP 2173.05(p).

5.1.2 In regard to claims 29 & 30, it is noted that as one of ordinary skill at the time the invention was made would fairly and reasonably interpret the language of claimed invention, then one of ordinary skill at the time the invention was made would be confused by how the claimed invention could usefully and beneficially implement and thereby achieve the function of the executable “computer program” or “computer code” or “computer instructions” that is stored on the recited “computer readable media”. In this regard it is noted that the claimed invention fails to positively recite any structure or action that one of ordinary skill at the time the invention was made would fairly and reasonably interpret or recognize as inherently having the ability of executing the store “computer program” or “computer code” or “computer instructions” that is stored on the recited “computer readable media” in order to implement the function of the

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“computer program” or “computer code” or “computer instructions” that is stored on the recited “computer readable media”. Because the claimed invention fails to recite a structure or action that would be fairly and reasonably interpreted or recognized by one of ordinary skill at the time the invention was made as inherently having the ability of executing the store “computer program” or “computer code” or “computer instructions” that is stored on the recited “computer readable media”, then such a structure or action may not be attributed in any manner to the claimed invention. Therefore one of ordinary skill at the time the invention was made would fairly and reasonably find the claimed invention to be vague, indefinite and unclear in regard to how the claimed invention would usefully and beneficially be operative to achieve the function of the “computer program” or “computer code” or “computer instructions” that is stored on the recited “computer readable media”.

5.1.3 In regard to claim 37, it is noted that as one of ordinary skill at the time the invention was made would fairly and reasonably interpret the language of the claimed invention, then one of ordinary skill at the time the invention was made would be confused by how to interpret claimed invention. In this regard it is noted that the claimed invention is directed to a machine with and unspecified structure that is characterized by having the ability to execute or carry out the actions of a process that is recited as a previously claimed invention. However, since the claimed invention fails to recite a specific structure that would be fairly and reasonably interpreted or recognized by one of ordinary skill at the time the invention was made as inherently having the ability of executing the functions of the steps of a previously claimed invention, then the claimed invention is a single means omnibus claim that is not limited to using any such structure and any particular structure may not be attributed in any manner to the claimed invention. Therefore one of ordinary skill at the time the invention was made would fairly and reasonably find the claimed invention to be vague, indefinite and unclear in regard to whether or not any machine would be within the scope of the claimed invention.

5.2 For the above reasons applicant has failed to particularly and distinctly point out what is regarded as the invention. Claims not explicitly mentioned above, inherent each the described problems through dependency to the explicitly mentioned base claim.

6. To overcome the above rejection of claims 29 & 30, the examiner suggests that the claims be amended to recite for example:

Claim 29 (currently amended): The method of claim 23 further comprising implementing the method of claim 23 by using a process to execute instructions stored on a computer readable storage media that are A computer readable storage media having computer executable instructions for implementing the method of claim 23, the computer readable storage media loadable directly into an internal memory of a computer.

Claim 30 (currently amended): The method of claim 23 further comprising implementing the method of claim 23 by using a process to execute instructions stored on a computer readable storage media A computer readable storage media having computer executable instructions for implementing the method of claim 23.

7. Response to applicant's arguments.

7.1 The objections and rejection that have not been repeated here in have been over come by applicant's last response.

7.2 In regard to the rejection of claims 29 & 30 under 35 U.S.C. 112 2nd paragraph, applicant's arguments are deem non persuasive and this rejection has been maintained in view of the respective modified rejection as set forth above and the following considerations.

7.2.1 Applicant's attempt to overcome this rejection has only added to the confusion regarding the subject of claims 29 & 30.

8. The following is a statement of reasons for the indication of allowable subject matter over the prior art:

A) the prior art, for example:

(1) Anderson (2,883,255) discloses a machine/process that provides the useful and beneficial function of a remote machine/process monitoring and logging machine/process in which a sufficient number of machine/process operating parameters to characterize the operation of the monitored machine/process are monitored. The monitored operating parameters are then compared to corresponding thresholds or setpoints in order to determining if the current operation of the monitored machine/process has deviated from the normal operation of the monitored machine/process. When it is determined that the current operation of the monitored machine/process has deviated, then the operating parameter data/information is remotely displayed to an user/operator in

a manner that permits the easy identification of the abnormal operating parameters by the user/operator.

(2) Bellows et al (5,132,920) discloses a machine/process that provides the useful and beneficial function of prioritizing the repair of a machine/process by using a determination of the severity of a failure of a machine/process as determined from the reciprocal of the mean time to failure of each of the failed components of the machine/process.

(3) Hooks et al (6,532,426) discloses a machine/process that provides the useful and beneficial function of using an evaluation or analysis of different operating scenarios during the process of designing machines/process in which the effective mean time to failure of a machine/process is determined based on an adjustment of the mean time to failure of each of the components of the machine/process with a consideration for available spare parts/components.

(4) Brand et al (7,149,673) discloses a machine/process that provides the useful and beneficial function of estimating the changes in the life of a machine/process/product in order to redesign the machine/process/product by considering the inverse of a mean time between failures of the machine/process/product.

B) however, the prior art does not fairly teach or suggest in regard to claims 23, 29, 30 & 37 a process in claim 23, an article or manufacture in claims 29 & 30 and as a machine in claim 37, that provides the useful and beneficial function of determining the mean time between failures of a machine/component by providing actions in claim 23 and structures in claims 29, 30 & 37 that perform at least the functions of:

(1) determining or acquiring a setpoint for the mean time between failures (MTBF) value for each of the critical components of a machine/process, that when a critical component fails then the machine/process will fail;

(2) determining or calculating a summation of the inverse or reciprocal of the values of the setpoint MTBF values for each of the critical components of the machine/process; and

(3) determining or calculating a predicted MTBF value as the inverse or reciprocal of the determined summation of the inverse or reciprocal values for the setpoint MTBF values for each of the critical components of the machine/process.

Claims 24-28 & 31-36, which depend from claim 23, are allowable over the prior art for the same reason.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0571. The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern Time).

9.1 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn, can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9.2 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC
10/23/2008

**/Edward Cosimano/
Primary Examiner Unit 2863**